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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/024,353	12/21/2001	Daniela Giacchetti	05725.0979-00	4662

7590 06/06/2005

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Washington, DC 20005-3315

EXAMINER
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SMITH, RUTH S

ART UNIT	PAPER NUMBER
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3737

DATE MAILED: 06/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/024,353

Applicant(s)

GIACCHETTI ET AL.

Examiner

Ruth S. Smith

Art Unit

3737

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 21 March 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-58 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-58 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                                   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>5/19/05, 4/17/03</u>  | 6) <input type="checkbox"/> Other: _____                                    |

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 33,58 are rejected under 35 U.S.C. 102(b) as being anticipated by Apple Corps. The claims are directly readable on Apple Corps in that the claims merely set forth a system comprising a processor. The processor disclosed by Apple Corps is considered to be capable of performing the method.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-8,10,17,20,23-27,29,31-41,43,48,51,53-58 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hillebrand et al. Hillebrand et al discloses a method for skin imaging and analysis using simulated images which then show altered images using a cosmetic product. Hillebrand et al fails to disclose the use of a simulated image as the initial image provided. In the absence of any showing of criticality or unexpected results, the use of a simulated image of the patient or a real image of the patient taken from a photograph would have been an obvious design choice. The use of simulated images are old and well known as disclosed by applicant on page 9 of the specification. The use of a simulated image would be advantageous in that no imaging equipment would be need to provide the initial image. One could

merely use the computer that is already being used to provide the subsequent simulation.

Claims 1-58 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hayes, Jr. et al. Hayes Jr. et al disclose simulation of cosmetic reconstruction in real time. The method includes inputting an image into a computer. Hayes Jr. et al fails to specifically disclose how the initial image is obtained. In the absence of any showing of criticality or unexpected results, the use of a simulated image of the patient or a real image of the patient taken from a photograph would have been an obvious design choice. The use of simulated images are old and well known as disclosed by applicant on page 9 of the specification. The use of a simulated image would be advantageous in that no imaging equipment would be need to provide the initial image. One could merely use the computer that is already being used to provide the subsequent simulation. Furthermore, it would have been obvious to one skilled in the art to have applied any known type of cosmetic changes to the patient and it would have been obvious to one skilled in the art to have showed the facial changes in combination with images of the entire patient dressed in clothing in order to more completely assess the changes to the patient's face.

Claims 1-32,34-57 are rejected under 35 U.S.C. 103(a) as being unpatentable over Massengill. Massengill discloses all of the claimed limitations except for the use of a simulated facial image. In the absence of any showing of criticality or unexpected results, the use of a simulated image of the patient or a real image of the patient taken from a photograph would have been an obvious design choice. The use of simulated images are old and well known as disclosed by applicant on page 9 of the specification. The use of a simulated image would be advantageous in that no imaging equipment would be need to provide the initial image. One could merely use the computer that is already being used to provide the subsequent simulation. The method of Massengill is applicable to all cosmetic areas of the body. The cosmetic product can be viewed to be the cosmetic surgical procedure. It would have been obvious to one skilled in the art to

show the facial changes in combination with images of the entire patient dressed in clothing in order to more completely assess the changes to the patient's face.

### ***Response to Arguments***

Applicant's arguments filed 3/21/05 have been fully considered but they are not persuasive. With respect to claims 33,58 the claims are not dependant claims in that claim 1, for example is directed to a method and claim 33 is directed to a system. Claim 33 is an independent apparatus claim merely set forth in a short-handed form. With regard to the rejection of claims under 35 USC 103, as previously set forth by the examiner, the references fail to disclose the use of a simulated image, however, the use of simulated images are old and well known as disclosed by applicant on page 9 of the specification. The use of a simulated image would be advantageous in that no imaging equipment would be need to provide the initial image. One could merely use the computer that is already being used to provide the subsequent simulation. The examiner does not agree with applicant's reasoning that one skilled in the art would not be motivated to modify the teachings of Hillebrand, Hayes or Massengill such that the initial image used is a simulated image. The references need not provide such motivation.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ruth S. Smith whose telephone number is 571-272-4745. The examiner can normally be reached on M-F 7:30 AM-4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Casler can be reached on 571-272-4956. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Ruth S. Smith  
Primary Examiner  
Art Unit 3737

RSS